HIGH COURT OF UTTARANCHAL, AT NAINITAL.

Criminal Misc. Application No. 192 of 2006

Jati Ram
S/o Sri Mangan Singh
Pradhan, R/o village Bahadurpur Jat
P.S. Pathri, Block Bahadarabad
Tehsil and District Haridwar ……Applicant

Versus

1. State of Uttaranchal
2. Rajendra Pratap Singh
   S/o Sri Dhanpal Singh
   R/o village Bahadarpur Jat
   P.S. Pathri
   Tehsil & District Haridwar ……..Respondents

Sri Vivek Shukla learned counsel for the applicant.
Sri Nandan Arya learned A.G.A. for the State.

Hon'ble J. C. S. Rawat, J.

1. This petition under section 482 Cr.P.C. has been filed against the judgment and order dated 24.07.1999 passed by the Sessions Judge, District Haridwar in criminal revision No.132/1999 Rajendra Pratap Singh Vs. State.

2. Brief facts of the case are that the applicant-Jati Ram was the Pradhan of village Bahadurpur Jat. The respondent No.2 moved an application under section 156(3) Cr.P.C. against the applicant and others before the Magistrate alleging therein that the applicant had illegally extended the benefit to the persons who were not entitled. It was further alleged that 17 persons were the beneficiaries under Rastriya Parivark Labh Yojna. The application forms were not filled up properly. The grampradhan and gram panchayat adhikari made wrong reports and recommendations. Thereafter, an ex-parte

inquiry was made and the applicant was directed to pay the money which was illegality given to those person who were not entitled. The said order was challenged before the Allahabad High Court and the said order was set aside by the Allahabad High Court on the ground that the opportunity of hearing the applicant had not been given and as such the petition was allowed and the applicant was directed to submit his representation. It has been alleged that no recovery certificate has been issued against the applicant. The Magistrate rejected the application filed under section 156(3) Cr.P.C. of the respondent. The respondent preferred a revision before the Sessions Judge. The learned Sessions Judge allowed the revision and directed the police to register and investigate the matter. Feeling aggrieved by the said order, the applicant had challenging the impugned order before the Allahabad High Court in the revision No.1492/1999. After creation of State of Uttaranchal, the said matter was received on transfer and it was found that the revision was not maintainable, therefore, the revision was withdrawn with the liberty to file petition under section 482 Cr.P.C. Therefore, the present petition has been filed before this Court.

3. It is to be seen as to whether the allegation made in the application discloses the offence or not. It is a well settled position of law that if an application submitted before the Magistrate discloses the offence, the Magistrate will direct the police to register the case and investigate the matter. It is also established position of law that if any application is filed before the police and if it discloses the offence the police will register the case and thereafter it will be investigated. It is also well settled position of law that if the I.O.

comes to the conclusion during the investigation that there is prima facie case against the accused, he will arrest the applicant. In view of the settled position of law, I would like to analyze the contents of the application filed before the Magistrate.

4. It was contended on behalf of the applicant that firstly the beneficiaries filled up the form and concerned village panchayat adhikari certifies the death. Thereafter, the Tehsildar certifies that a person is living below poverty line and then the beneficiaries submit the form alongwith death certificate and below poverty line certificate to the office of the block development officer. It was contended that gram pradhan had only certified the reports submitted by the gram panchayat adhikari and others concerned officers. Learned A.G.A. refuted the contention. If the application discloses the prima facie of a cognizable offence at this stage, the applicant fortifies with any other circumstance it is sufficient to lodge the FIR. Contention of the applicant is that the gram pradhan had only verified the certificate. As such, he is not liable for the offence. The gram pradhan being known to all the villagers is supposed to give the correct information. The gram panchayat adhikari may certifies wrongly, but it is not supposed for the gram pradhan to certify the fact without verifying the facts. The application discloses a cognizable offences. As such, the order of the Sessions Judge is correct.

5. It was further contended that the learned Sessions Judge has not power to direct the police to register the case and to investigate the matter. The Sessions Judge can only hear and set aside the order but the order should be passed by the Magistrate. The direction to

the police as has been given by the Sessions Judge is beyond his jurisdiction.

6. In view of the foregoing discussion, the learned Sessions Judge has rightly decided the matter, but the direction to register the case is quashed and the case is sent back to the Magistrate to pass an appropriate order in the light of the observations made above.

7. The petition is disposed of accordingly.

(J.C.S.RAWAT, J.)

Dated 29.03.2006

LSR